

REMARKS

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

Summary of Office Action

In the Office Action, beginning at page 2, Claims 18 and 19 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

In the Office Action, beginning at page 2, Claims 4 and 9 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

In the Office Action, beginning at page 3, Claims 1, 2, 6 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,813,855 to Crisio, Jr. (“Crisio’855”) in view of U.S. Patent No. 6,886,207 to Solanki (“Solanki’207”).

In the Office Action, beginning at page 4, Claims 1-4, 6, 10-13, 18 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Crisio’855 in view of U.S. Patent No. 5,970,564 to Inns et al. (“Inns’564”).

In the Office Action, beginning at page 5, Claims 1, 5 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Crisio’855 in view of U.S. Patent No. 5,991,959 to Raven et al. (“Raven’959”).

In the Office Action, beginning at page 6, Claims 7-9 and 14-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Crisio’855 in view of Inns’564 and further in view of Raven’959.

Summary of Response to Office Action

In Response to the May 15, 2008 Office Action, Applicant hereby amends 1 and 10, and cancels claims 2-4 and 7-9 without prejudice or disclaimer. Accordingly, claims 1, 5, 6, and 10-19 are currently pending. Claims 1, 6, and 10 are the only pending independent claims.

All Claims Are Allowable

Claims 1-19 in this application are rejected under various provisions of U.S. law. Applicant respectfully submits that all claims are allowable for the specific reasons set forth

below, and therefore requests issuance of this application.

35 U.S.C. § 112, first paragraph

In the Office Action, beginning at page 2, claims 18 and 19 were rejected under 35 U.S.C. § 112, first paragraph, as reciting subject matter that allegedly fails to comply with the written description requirement. Applicant respectfully traverses this rejection and requests reconsideration for at least the following reasons.

It is respectfully submitted that one of ordinary skill in the art at the time of filing the present application would have understood that the brush can be entirely spaced from the light emitting axis in order for the opening in the elastic portion to act as a tip-end light transmitting portion, as recited in the claims. If the brush intersects the light axis in the embodiments that include a tip-end light transmitting portion, the light emitting portion may not work properly or efficiently. Thus, a reasonable interpretation of the disclosure should provide enough evidence to ensure that the inventors had possession of the concept being claimed with respect to the brush portion being entirely spaced from the light emitting axis.

For at least the above reasons, it is respectfully submitted that claims 18 and 19 fully comply with the requirements of 35 U.S.C. § 112, first paragraph. Withdrawal of the rejection is respectfully requested.

35 U.S.C. § 112, second paragraph

In the Office Action, beginning at page 2, claims 4 and 9 were rejected under 35 U.S.C. § 112, second paragraph, as reciting subject matter that is allegedly indefinite. Applicant respectfully traverses this rejection and requests reconsideration for at least the following reasons.

In order to expedite prosecution, Claims 4 and 9 are canceled by this Amendment. Accordingly, the rejection is moot. However, it is respectfully submitted that one of skill in the art would have been able to determine the metes and bounds of claims 4 and 9, and that the claims as written were definite and in compliance with 35 U.S.C. § 112, second paragraph. Withdrawal of the rejection is respectfully requested.

35 U.S.C. § 103(a)

In the Office Action, beginning at page 3, claims 1, 2, 6 and 18 were rejected under 35 U.S.C. § 103(a) as reciting subject matter that is allegedly obvious, and therefore allegedly unpatentable, over the disclosure of Crisio'855 in view of the disclosure of Solanki'207. This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

Both Crisio'855 and Solanki'207 fail to disclose at least the feature of an elastic portion wherein the elastic portion entirely covers the opposed surface and entirely covers the side surface of the head portion of the toothbrush except for an opening in the tip end of the head portion to thereby provide the tip-end light transmitting portion that intersects with the longitudinal axis of the shaft configured to transmit light received from the light emitting means outside of the head portion to illuminate an interior of an oral cavity, as recited in claim 1. The rejection is also in error because Crisio'855 simply does not disclose a tip-end light transmitting portion. Instead, light is intersected by and emitted through the bristle tufts 20 in Crisio'855. Thus, even when combined with any of the secondary references, Crisio'855 does not disclose or teach a tip-end light transmitting portion, as recited in claim 1.

Because neither the Crisio'855 patent nor the Solanki'207 patent, either alone or in combination, teach the above-referenced features, as well as other features, of Applicant's claim 1, it is respectfully submitted that there is no *prime facie* case for obviousness.

The Office bears the initial burden of establishing a *prima facie* case of obviousness. M.P.E.P. § 2142. If the Office fails to set forth a *prima facie* case of obviousness, Applicant is under "no obligation to submit evidence of nonobviousness," such as unexpected results or commercial success. *Id.* In other words, if the Office fails to meet the initial burden of establishing a *prima facie* case of obviousness as to a given claim, then that claim is not obvious without any specific evidence of nonobviousness by Applicant.

In order to establish a *prima facie* case of obviousness, the Office must satisfy three requirements. M.P.E.P. § 2142. First, "the prior art reference, or references when combined, must teach or suggest *all* the claim limitations." *Id.* (emphasis added). Second, the Office must

show that there is "some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." *Id.* Finally, "there must be a reasonable expectation of success." *Id.*

In the present case, as stated above, neither of the cited references either alone or in combination teaches or suggests at least the feature of an elastic portion that entirely covers the opposed surface and entirely covers the side surface of the head portion of the toothbrush except for an opening in the tip end of the head portion to thereby provide the tip-end light transmitting portion that intersects with the longitudinal axis of the shaft configured to transmit light received from the light emitting means outside of the head portion to illuminate an interior of an oral cavity, as recited in claim 1. Thus, the Office Action fails to establish a *prima facie* case of obviousness as to claim 1.

Further, the Office Action attempts to provide motivation for modifying Crisio'855 with Solanki'207 by stating that certain features are a "design choice" and that the use of a massage element would have been obvious in Crisio'855. However, it is respectfully submitted that modification of the Crisio'855 device with Solanki'207 would destroy the intended functionality and purpose of Crisio'855, and would not permit an adequate amount of light to be dispensed by the Crisio'85 device. Thus, in addition to the fact that neither reference (alone or in combination) discloses at least one feature of applicant's claim 1, the motivation for combining the references is also deficient. Finally, the Office Action fails to show that one of ordinary skill in the art would have reasonably expected success by modifying Crisio'855 in view of Solanki'207 as suggested by the Office Action.

The Office Action fails to meet all three requirements for establishing a *prima facie* case of obviousness. Therefore, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn.

With regard to claim 6, the Office Action indicates that Solanki'207 discloses a transparent material at column 4 line 19. However, the disclosure at column 4 line 19 of Solanki'207 indicates that a silicone elastomer can be used for the elastomeric massaging

elements. There is no disclosure that the silicone is transparent. Accordingly, it is respectfully submitted that there remains no disclosure of at least the feature of an elastic body being formed from a transparent material, as recited in claim 6. Because Crisio'855 and Solanki'207, either alone or in alleged combination, fail to disclose or teach at least this feature of Applicant's claim 6, it is respectfully submitted that the rejection of claim 6 is in error.

Further, since claim 2 is canceled and claim 18 depends from and respectively incorporates all the features of claim 1, claim 18 is also not obvious over the Crisio'855 patent in view of the Solanki'207 patent at least for the above reasons for which claim 1 is not obvious, and for the separate features that claim 18 recites.

Thus, for all of the above reasons, Applicant respectfully requests that the rejection of claims 1, 2, 6 and 18 under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, beginning at page 4, claims 1-4, 6, 10-13, 18 and 19 were rejected under 35 U.S.C. § 103(a) as reciting subject matter that is allegedly obvious, and therefore allegedly unpatentable, over the disclosure of Crisio'855 in view of the disclosure of Inns'564. This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

Independent claim 1 of the present application recites an elastic portion wherein the elastic portion entirely covers the opposed surface and entirely covers the side surface of the head portion of the toothbrush except for an opening in the tip end of the head portion to thereby provide the tip-end light transmitting portion that intersects with the longitudinal axis of the shaft configured to transmit light received from the light emitting means outside of the head portion to illuminate an interior of an oral cavity. At least this feature is completely absent from both Crisio'855 and Inns'564, either alone or in alleged combination.

With regard to independent claim 6, the Office Action indicates that Inns'564 discloses a transparent material at column 4 line 23. However, the disclosure at column 4 line 23 of Inns'564 indicates that various polyesters can be used for an elastomeric bridge. There is no disclosure that the polyester materials are transparent. Accordingly, it is respectfully submitted that there remains no disclosure of at least the feature of an elastic body being formed from a

transparent material, as recited in claim 6. Because neither Crisio'855 nor Inns'564, either alone or in alleged combination, disclose or teach at least this feature of Applicant's claim 6, it is respectfully submitted that the rejection of claim 6 is in error.

With regard to claim 10, both Crisio'855 and Inns'564 either alone or in combination fail to disclose at least the feature of an elastic portion that includes, a shaft portion that extends substantially about the shaft of the toothbrush, two side portions that each extend continuously and substantially perpendicularly from the shaft portion and along respective opposite side surfaces of the head portion of the toothbrush, and an opposed portion that extends continuously and substantially perpendicularly from the shaft portion and along the opposed surface of the head portion of the toothbrush, as recited in claim 10. In addition, neither Crisio'855 nor Inns'564 either alone or in combination disclose or teach a central portion located at a substantially central portion of the opposed surface of the head portion and defining an opening that is formed in a substantially letter "U" shape around the central portion as recited in claim 10. Nor do either of the references, either alone or in combination, disclose or teach the feature of a tip end portion provided with a head portion light transmitting portion formed as a substantial rectangle, as recited in claim 10.

Because neither the Crisio'855 patent nor the Inns'564 patent, either alone or in combination, teach at least the above-referenced features, as well as other features, of Applicant's claims 1, 6 and 10, it is respectfully submitted that there is no *prime facie* case for obviousness.

The Office Action fails to meet all three requirements for establishing a *prima facie* case of obviousness. Therefore, Applicant respectfully requests that the rejection of claims 1, 6 and 10 under 35 U.S.C. § 103(a) be withdrawn.

Further, since claims 18, 11-13, and 19 depend from and respectively incorporate all the features of claims 1, 6, and 10, respectively, claims 18, 11-13, and 19 are also not obvious over the Crisio'855 patent in view of Inns'564 at least for the above reasons for which claims 1, 6, and 10 are not obvious, respectively, and for the separate features that each of these claims

recites. Thus, Applicant respectfully requests that the rejection of claims 1-4, 6, 10-13, 18 and 19 under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, beginning at page 5, claims 1, 5 and 18 were rejected under 35 U.S.C. § 103(a) as reciting subject matter that is allegedly obvious, and therefore allegedly unpatentable, over the disclosure of Crisio'855 in view of the disclosure of Raven'959. This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

Independent claim 1 of the present application recites an elastic portion wherein the elastic portion entirely covers the opposed surface and entirely covers the side surface of the head portion of the toothbrush except for an opening in the tip end of the head portion to thereby provide the tip-end light transmitting portion that intersects with the longitudinal axis of the shaft configured to transmit light received from the light emitting means outside of the head portion to illuminate an interior of an oral cavity. At least this feature is completely absent from both Crisio'855 and Raven'959, either alone or in alleged combination.

Because neither the Crisio'855 patent nor the Raven'959 patent, either alone or in combination, teach the above-referenced feature, as well as other features, of Applicant's claim 1, it is respectfully submitted that there is no *prime facie* case for obviousness.

The Office Action fails to meet all three requirements for establishing a *prima facie* case of obviousness. Therefore, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn.

Further, since claims 5 and 18 depend from and respectively incorporate all the features of claim 1, claims 5 and 18 are also not obvious over the Crisio'855 patent in view of the Raven'959 patent at least for the above reasons for which claim 1 is not obvious, and for the separate features that each of these claims recites. Thus, Applicant respectfully requests that the rejection of claims 1, 5 and 18 under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, beginning at page 6, claims 7-9 and 14-17 were rejected under 35 U.S.C. § 103(a) as reciting subject matter that is allegedly obvious, and therefore allegedly unpatentable, over the disclosure of Crisio'855 in view of the disclosure of

Inns'564 and further in view of the disclosure of Raven'959. This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

Claims 7-9 are canceled without prejudice or disclaimer. Therefore the rejection as it might apply to claims 7-9 is now moot.

Claims 14-17 depend from claim 10, and therefore include the feature of an elastic portion that includes, a shaft portion that extends substantially about the shaft of the toothbrush, two side portions that each extend continuously and substantially perpendicularly from the shaft portion and along respective opposite side surfaces of the head portion of the toothbrush, and an opposed portion that extends continuously and substantially perpendicularly from the shaft portion and along the opposed surface of the head portion of the toothbrush. At least this feature is not disclosed or taught in any of the applied references to Crisio'855, Inns'564, or Raven'959, either alone or in alleged combination. The rejection is also in error because neither Crisio'855, Inns'564, nor Raven'959, either alone or in combination disclose or teach a central portion located at a substantially central portion of the opposed surface of the head portion and defining an opening that is formed in a substantially letter "U" shape around the central portion as recited in claim 10. Nor do any of the references, either alone or in combination, disclose or teach the feature of a tip end portion provided with a head portion light transmitting portion formed as a substantial rectangle, as recited in claim 10.

Because 14-17 depend from 10, claims 14-17 define over the Crisio'855 patent, Inns'564 patent, and Raven'959 patent, either when taken alone or in combination, because the above noted features of claim 10 are absent in all of these cited references. Accordingly, it is respectfully submitted that there is no *prime facie* case for obviousness.

The Office Action fails to meet all three requirements for establishing a *prima facie* case of obviousness. Therefore, Applicant respectfully requests that the rejection of claim 7-9 and 14-17 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion


Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of this patent application is therefore respectfully solicited.

If the patent Examiner believes that a telephone conference with the undersigned would expedite passage of this patent application to issue, she is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. If, however, additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is hereby authorized to charge fees necessitated by this paper, and to credit all refunds and overpayments, to our Deposit Account listed on Applicant's initial application filing transmittal document.

Respectfully submitted,

Cermak Kenealy & Vaidya LLP

By:  /djkl/
David J. Kenealy
Registration No. 40,411

U.S.P.T.O. Customer Number 39083

Cermak Kenealy & Vaidya LLP
515 E. Braddock Rd., Suite B
Alexandria, Virginia 22314
703.778.6610 (v)
703.652.5101 (f)

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